

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE: Jennifer Rogers Bergmann,)	
)	
Debtor.)	C/A No. 16-02250-DD
_____)	Chapter 7
)	
E. Perry Burrus, III and Lake Como,)	ADV. PRO. 16-80113-DD
LLC,)	
Plaintiffs,)	
)	
vs.)	NOTICE OF MOTION AND MOTION
)	TO QUASH SUBPOENA OR FOR
Jennifer Rogers Bergmann,)	PROTECTIVE ORDER
)	
Defendant.)	
)	
_____)	

NOW COMES James L. Van Grouw, a non-party witness to this matter, by and through his undersigned counsel, who propounds the following motion on the above named parties seeking to quash the subpoena of J. Ashley Twombly, attorney for E. Perry Burrus, III and Lake Como, LLC, or in the alternative, for a protective order. This motion is based upon the following facts and law:

1. James L. Van Grouw ("Van Grouw") was mailed a subpoena on December 6, 2017 by counsel for Plaintiffs. Said subpoena commands Van Grouw's attendance at the J. Bratton Davis U.S. Bankruptcy Courthouse, 1100 Laurel Street, Columbia, South Carolina from January 22, 2018 through January 26, 2018.
2. Van Grouw works, lives, and transacts business in Bluffton, South Carolina, which is approximately 152 miles from the place where Van Grouw is commanded to appear for a week-long trial.

3. Van Grouw is self employed as a certified public accountant and tax preparation professional.
4. The week where Van Grouw is commanded to appear before this Court is part of his busy season as an accountant and occurs during a time commonly known as tax season.
5. That pursuant to Federal Rules of Civil Procedure 45(c)(1)(A) – (B), a person may only be compelled to attend a trial “ . . . within 100 miles of where the person resides, is employed, or regularly transacts business in person, or within the state where the person resides, is employed, or regularly transacts business in person, if the person is a party or a party’s officer or is commanded to attend a trial and would not incur substantial expense.”
6. That pursuant to Federal Rules of Civil Procedure 45(d)(3)(A)(ii) and (iv), this Court may quash or modify a subpoena that “requires a person to comply beyond the geographical limits specified in Rule 45(c)” or when a subpoena “subjects a person to undue burden”.
7. That Van Grouw seeks to quash this subpoena pursuant to Federal Rule of Civil Procedure 45(d)(3)(A)(ii). Plaintiffs’ attorney’s subpoena to Van Grouw fails to comply with the geographical limitations contained in Rule 45(c) because Columbia, South Carolina is over 100 miles away from where Van Grouw lives, works, and regularly conducts business in person. Further, Van Grouw would incur substantial expense if required to attend trial because his attendance for a week-long trial would require him to close his office, lose a week of work productivity during his busiest season of the year, and would require him to pay out of pocket for lodging, meals, and other incidental expenses incurred in connection with his commanded attendance.

8. That additionally and in the alternative, Van Grouw seeks to quash this subpoena pursuant to Federal Rule of Civil Procedure 45(d)(3)(A)(iv). Requiring Van Grouw to attend a week-long trial in this matter will subject him to undue burden. Van Grouw will be required to close his office and miss work for a week to attend this trial during his busiest season of the year. As a self-employed CPA, this will cost Van Grouw thousands of dollars in lost productivity and revenue. In addition, and if commanded to attend trial, Van Grouw will incur substantial expense in lodging and meals, or be required to make a round trip that requires him to drive in excess of 300 miles per day.

WHEREFORE, James Van Grouw, the above named non-party witness, prays this Honorable Court will inquire into the matters contained herein and issue its Order quashing Plaintiffs' subpoena or in the alternative, granting Van Grouw a Protective Order.

Respectfully submitted,

VAUX MARSCHER BERGLIND, P.A.

By: S/ROBERTS VAUX

Attorneys for Non-Party Witness James L. Van Grouw
Roberts Vaux, Fed. ID No. 4459
James P. Scheider, Jr. Fed ID No. 11003
Stephen Meyer, Fed. ID No. 12237
Post Office Box 769
Bluffton, South Carolina 29910
Telephone 843-757-2888
Facsimile 843-757-2889

January 18, 2018
Bluffton, South Carolina